



FEDERAL ELECTION COMMISSION

Washington, DC 20463

JUN 2 2008

MEMORANDUM

TO: The Commission

FROM: Thomasenia P. Duncan
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ml Mark Shonkwiler
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RE: Closure of MURs 4389 and 4652 (James Toledano, et al.)

In any compliance matter in which a civil action is commenced, the Commission is required to make public the files in the underlying enforcement action after it notifies the complainant and respondent of the final disposition of the civil action. See 11 C.F.R. § 111.20(c).

On April 17, 2000, the Commission filed a lawsuit in federal district court against James Toledano for violations of 2 U.S.C. § 432(b), following unsuccessful post-probable cause conciliation negotiations in MURs 4389 and 4652.¹ Prior to filing the lawsuit, the Commission conciliated or took no further action regarding the other six respondents in these matters. Specifically, the Commission entered into conciliation agreements with four of the six respondents and took no further action regarding an additional two respondents. The Commission also closed the file as to those six respondents and notified them of the file closings. However, the case file has not been closed nor released to the public pending resolution of the Toledano lawsuit.

On June 11, 2001, the district court entered an order of final judgment, in which it granted the Commission's motion for summary judgment and ordered Toledano to pay a

¹ The Commission's complaint sought declaratory, injunctive, and other appropriate relief against Toledano for failing to forward two contributions totaling \$10,000, along with the names and addresses of the contributors and the dates the contributions were received, to the treasurer of the Orange County Democratic Central Committee within ten days after receiving the contributions.

1 \$7,500 civil penalty and the Commission's costs. Toledano subsequently appealed the
2 district court's decision. The Ninth Circuit Court of Appeals affirmed the district court's
3 decision, and on its own initiative ordered Toledano to pay the Commission's attorney's
4 fees and related expenses as a sanction for Toledano's bad-faith conduct and abuse of
5 judicial process. *FEC v. Toledano*, 317 F.3d 939 (9th Cir. 2002, as amended on denial of
6 rehearing 2003).

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8 This case remained in Litigation, because there was a dispute between the parties
9 after the Ninth Circuit's decision regarding whether the case had completely ended, as
10 Toledano contended that his petitions for rehearing were still pending. The Court had, in
11 fact, denied his petitions for rehearing and the passage of time has made that even clearer.
12 Accordingly, it appears that the Toledano lawsuit has reached a final conclusion, and
13 there is nothing prohibiting the public release of the files in MURs 4389 and 4652 once
14 the Commission approves the closing of the files and the notification letters required by
15 section 111.20(c) are sent.

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17 **RECOMMENDATIONS:**

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19 1. Close the files in MURs 4389 and 4652.
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21 2. Approve the appropriate letters.